

No. 15644

In the

United States Court of Appeals

For the Ninth Circuit

MARION S. FELTER, on behalf of himself
and others similarly situated,

Appellant,

vs.

SOUTHERN PACIFIC COMPANY, a corporation;
BROTHERHOOD OF RAILROAD TRAINMEN, a voluntary association;
J. J. CORCORAN, as General Chairman, General Committee,
Brotherhood of Railroad Trainmen;
J. E. TEAGUE, as Secretary, General Committee,
Brotherhood of Railroad Trainmen,

Appellees.

Brief for Appellee Southern Pacific Company

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APPELLEE'S STATEMENT OF THE CASE

This is a suit for declaratory and injunctive relief brought pursuant to 28 U.S.C. 1332, 1337 and 2201, for the purpose of determining a question in actual controversy between appellant, Marion S. Felter and others similarly situated, and appellees, Southern Pacific Company (hereinafter referred to as the "Company") and Brotherhood of Railroad Trainmen (hereinafter referred to as "B.R.T."), to-wit, the ques-

tion of the validity under the Railway Labor Act (45 U.S.C. 152, Eleventh) of a written collective bargaining agreement which became effective August 1, 1955 (R. 74-80). This agreement, which is now and at all times material has been in effect between the Company and the B.R.T., provides in effect that the Company shall deduct sums for periodic dues, initiation fees, assessments and insurance (not including fines and penalties), payable to the B.R.T. by members thereof from "wages earned in any of the services or capacities covered in Section 3, First (h) of the Railway Labor Act defining the jurisdictional scope of the First Division, National Railroad Adjustment Board, upon the written and unrevoked authorization of a member in the form agreed upon by the parties hereto * * *." This arrangement is commonly (and hereinafter) referred to as a "Dues Deduction Agreement." This Dues Deduction Agreement (R. 74-80) provides (in part) :

"[1] (c). Both the authorization forms and the revocation of authorization forms shall be reproduced and furnished as necessary by the Organization without cost to the Company. *The Organization shall assume full responsibility for the procurement and execution of the forms by employes and for the delivery of such forms to the Company.*

2. *Deductions as provided for herein shall be made by the Company in accordance with certified deduction lists furnished to the Division Superintendent by the Treasurer of the Local Lodge of which the employe is a member. Such lists, together with assignment and revocation of assignment forms, shall be furnished to the Division Superintendent on or before the 5th day of each month in which the deduction or termination of deduction is to become effective as hereinafter provided. The original lists furnished shall show the employe's name, employe account number, and the amount to be deducted in the form approved by the Company.*

Thereafter, two lists shall be furnished each month by the Treasurer of the Local Lodge to the Division Superintendent as follows:

(a). A list showing any changes in the amounts to be deducted from the wages of employes with respect to whom deductions are already being made. Such list shall show both the amounts previously authorized to be deducted and the new amounts to be deducted; *also the names of employes from whose wages no further deductions are to be made which shall be accompanied by revocation of assignment forms signed by each employe so listed.* Where no changes are to be made the list shall so state.

(b). A list showing additional employes from whose wages the Company shall make deductions as herein provided, together with an assignment authorization form signed by each employe so listed. Where there are no such additional employes the list shall so state." (Emphasis supplied.)

The Company has scrupulously complied with the terms of the Dues Deduction Agreement.

Appellant and others similarly situated executed wage assignments in accordance with the Dues Deduction Agreement (R. 67). Thereafter, appellant and others submitted revocations of wage assignment to the Company and the B.R.T. (R. 67) which were neither reproduced nor furnished by the B.R.T. as required by the Dues Deduction Agreement (R. 24, 28, 74-75). Those revocations which were submitted to the Company were forwarded to the B.R.T. to be processed in accordance with the Dues Deduction Agreement (R. 28-30). Appellant was promptly notified by the B.R.T. that the revocation of assignment which he had submitted could not be accepted because it had not been reproduced and furnished by the B.R.T. as required by the Dues Deduction Agreement (R. 25). The B.R.T. then mailed to appel-

lant a form which would be accepted by the B.R.T. (R. 25). Appellant never returned the form furnished to him by the B.R.T. (R. 25-26).

On April 12, 1957, appellant filed complaint for declaratory and injunctive relief in the United States District Court (R. 1-10). Appellees B.R.T. and Southern Pacific Company filed answers (R. 35, 62). There being no substantial dispute as to the facts, the B.R.T. and the appellant moved for summary judgment or dismissal (R. 46-47, 59-61). On May 24, 1957, United States District Judge Edward P. Murphy (R. 65-70) held that "the dues deduction agreement as interpreted by the defendants is a reasonable compliance with the Railway Labor Act and not violative of plaintiff's rights under the Act", and dissolved the temporary restraining order and dismissed the action.

ARGUMENT

- I. **As stated in the opinion of the District Court, the only question is whether the procedure established by the Dues Deduction Agreement places such an unreasonable burden on employees who wish to withdraw from the brotherhood that it operates as a violation of an employee's right to change unions under the Railway Labor Act.**

There is not, nor can there be, any dispute concerning interpretation of the Dues Deduction Agreement. The agreement is clear and explicit. It provides that revocations of wage assignments must be on forms "reproduced and furnished" by the B.R.T. and that the forms must be delivered to the Company through the B.R.T. (R. 75). The Court is concerned herein only with the question of whether these requirements are valid under Section 2, Eleventh of the Railway Labor Act (45 U.S.C. § 152, Eleventh).

Appellant, in his brief, points out that the Railway Labor Act provides that employees shall be free of "interference,

influence or coercion" in their choice of representatives (45 U.S.C. § 152, Third). Moreover, the Act also provides that nothing "shall prevent an employee from changing membership from one organization to another organization" (45 U.S.C. § 152, Eleventh (c)). However, the statement of appellant that the provisions of the Dues Deduction Agreement here under consideration constitute limitations not authorized by the Railway Labor Act and are "contrary to its entire design" is erroneous (Appellant's Brief, p. 9). There is absolutely nothing in the Railway Labor Act or in any other Act of Congress to indicate that the design of the Act or the intent of Congress was to insure that an employee would have absolute freedom to skip from one union to another. The purpose of the Railway Labor Act in insuring that certain employees may change unions has been clearly stated by the United States Supreme Court in *Pennsylvania R. Co. v. Rychlik*, 352 U.S. 480 (1957) as follows (p. 492):

"It thus becomes clear that the only purpose of Section 2, Eleventh (c) was a very narrow one: to prevent compulsory dual unionism or the necessity of changing from one union to another when an employee temporarily changes crafts. The aim of the Section, which was drafted by the established unions themselves, quite evidently was not to benefit rising new unions by permitting them to recruit members among employees who are represented by another labor organization. Nor was it intended to provide employees with a general right to join unions other than the designated bargaining representative of their craft, except to meet the narrow problem of intercraft mobility. This is made particularly clear when the provision is taken in the context of American labor relations in general. The National Labor Relations Act contains no parallel to subsection (c), and employees under a union-shop

contract governed by that Act must join and maintain membership in the union designated as the bargaining representative or suffer discharge. Similarly, subsection (c) does not apply to *nonoperating* employees, where the problem of seasonal intercraft movement does not exist. Railroad employees such as clerks working under a union-shop contract have no right at all to join a union other than the bargaining representative. In other words, once a union has lawfully established itself for a period of time as the authorized bargaining representative of the employees under a union-shop contract, Congress has never deemed it to be a 'right' of employees to choose between membership in it and another competing union. If Congress intended to confer such a right, it would scarcely have denied the right to nonoperating employees of the railroads or industrial employees under the National Labor Relations Act. The purpose of Section 2, Eleventh (c) was simply to solve the problem of intercraft mobility under railroad union-shop contracts."

Thus, while the appellant in this case does have the privilege of changing unions, it cannot be contended that it was the intent of Congress to free the privilege of all restrictions no matter how reasonable they might be. Therefore, as correctly stated by the trial court (R. 69) :

"The only question is whether the procedure established by this agreement places such an unreasonable burden on employees who wish to withdraw from the Brotherhood that it operates as a violation of an employee's right under the Act to change unions."

II. The provisions of the Dues Deduction Agreement comply with the Railway Labor Act and are not violative of appellant's rights under the Act.

A. The requirement that revocations be transmitted to the Company through the B.R.T. is reasonable and not violative of the Railway Labor Act.

There are two separate requirements of the Dues Deduction Agreement. One is that the revocation must be on forms "reproduced and furnished" by the B.R.T. and the other is that the forms must be delivered to the Company through the B.R.T., together with certified deduction lists on or before the 5th day of the month in which the change in deductions is to become operative (R. 75). Clearly, appellee Company is vitally concerned with the latter requirement.

The Company receives no benefit whatever from the existence of a Dues Deduction Agreement. Such an agreement is solely for the benefit of the Organization and those employees who desire to avoid the inconvenience of making their own individual payments to the Organization of which they are members. Under such circumstances, it is only proper that the Union, the representative of the employee, should have the burden of insuring that revocations are not forgeries, take the responsibility for calculating the amounts to be deducted, be responsible for keeping accurate and up-to-date lists and do such other bookkeeping as does not necessarily need to be performed by the Company. In fact, such an arrangement clearly serves the purpose of avoiding disputes and controversies between the Union and the Company and is therefore in accord with the express purpose of the Railway Labor Act (45 U.S.C. § 152, First). Moreover, there is no requirement in the Railway Labor Act that the Company enter into a Dues Deduction Agreement, and it would undoubtedly be justified in refusing to make such an agreement, from which it derives absolutely no benefit, without the establishment of an orderly procedure. Unless

the Act contemplated the establishment of such an orderly procedure, it would seem unlikely that any Company would enter into a Dues Deduction Agreement and that portion of the statute allowing such agreements would become a nullity. Certainly Congress had no such intent.

It is clearly necessary that both the B.R.T. and the Company know when an employee revokes his existing authorization for the deduction of his dues, and the Union is obviously the logical party to receive and determine the validity of any revocation in the first instance. The requirement that revocations be transmitted to the Company through the B.R.T. in no way interferes with the right of the employee to make such revocations, and does not constitute a burden of any kind upon the employee. It is just as easy for the employee to send the revocation to the B.R.T. as it is to send it to the Company.

B. The requirement that revocation forms be "reproduced and furnished" by the B.R.T. is reasonable and not violative of the Railway Labor Act.

The Railway Labor Act (45 U.S.C. § 152, Eleventh (b)) says nothing as to the procedure to be followed in making deductions from wages except that authorizations and revocations thereof be in writing. However, it is obvious that some form of reasonable and orderly procedure must be established if confusion and misunderstandings are to be avoided or, at least, reduced to an absolute minimum. What the procedure shall be has been left to the parties when and if they "make agreements providing for the deduction".

The requirement that revocation forms be "reproduced and furnished" by the B.R.T. also serves another desirable objective. When the B.R.T. furnishes its own forms either in person or by mail to persons whom it knows to be members or former members, it may feel reasonably assured

when the correct form is returned that it is not a forgery and is the result of a considered decision of the employee. The B.R.T. has just as much right to be reasonably protected against spurious revocations as does the employee to make a revocation.

Certainly it is no more of a burden to ask the B.R.T. to provide appellant with the correct form than it would be for him to make such a request to some other union. Moreover, appellant voluntarily followed the agreement and obtained the correct form from the B.R.T. at the time he made his original authorization. What could be more logical than that he follow the same procedure when revoking the authorization?

Finally, it is difficult to see how requiring the appellant to request a correct form from the B.R.T. can constitute an unreasonable burden, or any burden at all, upon his right to change unions, since he obviously cannot change his union affiliation without informing the B.R.T. of his withdrawal.

C. Appellant's failure to have his revocation accepted was due entirely to his own refusal to send in the correct form to the B.R.T.

In his brief, appellant contends at length that if required to obtain the proper form from the B.R.T., he may be subjected to pressures not to revoke his wage assignment and above all not to change his union affiliation. However, there is absolutely nothing either in the record or in the Dues Deduction Agreement to give substance to these alleged fears. Appellee Southern Pacific Company concedes that if the B.R.T. refused or failed to furnish the correct and acceptable revocation forms upon request of the appellant, or if the B.R.T. refused to furnish such forms, unless and until the appellant submitted to efforts to persuade him not to change his union affiliation, the appellant would be sub-

jected to unreasonable burdens and would be entitled to effect a revocation of his wage assignment by other means.

However, such conduct, besides being an unreasonable burden upon the right of plaintiff to change unions, would also constitute a violation of the Dues Deduction Agreement itself. Clearly, the Dues Deduction Agreement contemplates that the B.R.T. shall have the acceptable forms in readiness and that the B.R.T. will furnish them promptly to an employee who wishes to revoke his wage assignment. Moreover, the record clearly demonstrates that the B.R.T. *did* have such forms available and *did* furnish the forms promptly to employees who requested them, including the appellant, without dilatory tactics of any kind. In fact, the record clearly shows that as soon as the B.R.T. became aware of the fact that appellant wished to revoke his wage assignment, the B.R.T. sent him the correct form to fill out even though appellant had never requested that the correct form be sent to him. Moreover, this form was mailed to him and no personal contact with the B.R.T. was requested or required (R. 25). Thus, despite all the appellant's protestations that the B.R.T. could refuse to furnish the forms or might refuse to furnish such forms except under circumstances whereby the appellant could be subjected to pressures not to change his union affiliation, the fact is that none of these contentions are supported by either the Dues Deduction Agreement itself, or by the actual facts. The only reason appellant failed to accomplish his objective of revoking his wage assignment, was his refusal to fill out and return the correct form, which was actually furnished to him by the B.R.T.

- D. Appellant should not be allowed to repudiate the contract which he has taken advantage of and which was made on his behalf by his collective bargaining representative.**

Appellant in this case is in the position of now attempting to disregard a contract which he has accepted and followed so long as he considered it convenient to do so. The B.R.T. in entering into the Dues Deduction Agreement acted as the chosen representative of the appellant. Agreements made by the collective bargaining representative are binding upon the employees represented by the B.R.T. *Atlantic Coast Line R.R. v. Pope*, 119 F. 2d 39 (4th Cir. 1941). Even if this were not true, appellant, by authorizing deductions from his wages pursuant to the agreement, ratified and accepted the terms thereof. Appellant knew the terms of the agreement because he obtained the correct form to make his original wage deduction authorization, nor has appellant ever contended that he didn't know that the agreement provided that the revocation forms were to be "reproduced and furnished" by the B.R.T. In other words, appellant knew the terms of the agreement; he knew he had to obtain the form from the B.R.T.; the B.R.T. voluntarily furnished him with the correct form, and the only reason appellant failed to have the Company cease making deductions from his wages in accordance with his original authorization was his apparently deliberate failure to follow the terms of the contract with which he was familiar and pursuant to which he had originally authorized the deductions.

CONCLUSION

In summary, appellee Southern Pacific Company contends that a Dues Deduction Agreement may provide reasonable and orderly procedures governing its operation and the only right of appellant is to be free of unreasonable burdens

upon his privilege of changing unions. Moreover, both the Dues Deduction Agreement and the facts of this case show that the method of revocation is reasonable and serves the purpose of avoiding disputes in accordance with the express purpose of the Railway Labor Act and does not constitute an unreasonable burden upon appellant's privilege of changing unions. Therefore, it is respectfully submitted that the decision of the trial court is correct and should be affirmed.

Respectfully submitted,

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Dated: February 20, 1958.